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2                   UNITED STATES DISTRICT COURT  
3                   FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4                   SAN JOSE DIVISION

5                   UNITED STATES OF AMERICA,

6                   PLAINTIFF,                   CASE NO. CR-05-00215-EJD

7                   VS.                           SAN JOSE, CALIFORNIA

8                   ERIC LIGHTER,               JANUARY 7, 2016

9                   DEFENDANT.               PAGES 1 - 28

10                  TRANSCRIPT OF PROCEEDINGS  
11                  BEFORE THE HONORABLE EDWARD J. DAVILA  
12                  UNITED STATES DISTRICT JUDGE

13                  A-P-P-E-A-R-A-N-C-E-S

14                  FOR THE PLAINTIFF:       U.S. DEPARTMENT OF JUSTICE  
15   BY: CHARLES O'REILLY  
16   KATHERINE WONG  
17   601 D STREET NW  
18   WASHINGTON, DC 20004

19                  FOR THE DEFENDANT:      LAW OFFICES OF JAY ADAM RORTY  
20   BY: JAY RORTY  
21   835 CEDAR STREET  
22   SANTA CRUZ, CALIFORNIA 95060

23                  U.S. PRETRIAL SERVICE: ALLEN LEW  
24                  U.S. MARSHAL SERVICE: MARY ANDERSON

25                  OFFICIAL COURT REPORTER:   IRENE L. RODRIGUEZ, CSR, RMR, CRR  
   CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,  
TRANSCRIPT PRODUCED WITH COMPUTER.

1 SAN JOSE, CALIFORNIA

JANUARY 7, 2016

2  
3 P R O C E E D I N G S

4 (COURT CONVENED AT 10:28 A.M.)

5 THE COURT: GOOD MORNING.

6 THE CLERK: CALLING CASE NUMBER 05-215, UNITED  
7 STATES VERSUS ERIC LIGHTER.

8 MR. O'REILLY: CHARLES O'REILLY AND KATHERINE WONG  
9 FOR THE UNITED STATES.

10 THE COURT: GOOD MORNING. NICE TO SEE YOU AGAIN.

11 MR. O'REILLY: GOOD MORNING AGAIN.

12 MR. RORTY: GOOD MORNING, YOUR HONOR. JAY RORTY  
13 WITH MR. LIGHTER WHO IS PRESENT IN CUSTODY.

14 THE COURT: THANK YOU. GOOD MORNING.

15 GOOD MORNING, MR. LIGHTER.

16 THE DEFENDANT: GOOD MORNING.

17 THE COURT: THIS MATTER APPEARS ON CALENDAR PURSUANT  
18 TO SOME PLEADINGS FILED BY THE PARTIES.

19 LET ME JUST SEE AND LET ME INDICATE THAT I HAVE RECEIVED  
20 AND READ DOCUMENT 543, WHICH IS THE UNITED STATES MOTION  
21 REGARDING POST-SECTION 4241 PROCEEDINGS; I HAVE ALSO RECEIVED  
22 DOCUMENT NUMBER 544, WHICH IS THE GOVERNMENT'S OPPOSITION TO  
23 THE GOVERNMENT'S MOTION REGARDING POST-SECTION 4241; AND I HAVE  
24 ALSO RECEIVED DOCUMENT 547, WHICH IS THE UNITED STATES REPLY TO  
25 THE DEFENDANT'S OPPOSITION.

1 I HAVE ALSO, OF COURSE, READ AND REVIEWED THE REPORT FROM  
2 THE DEPARTMENT OF JUSTICE, THE FEDERAL MEDICAL CENTER AT  
3 BUTNER. IT'S DATED NOVEMBER 18, 2015. AND I THINK IT'S  
4 11 PAGES. IT'S SIGNED BY TRACY O'CONNOR PENNUTO,  
5 P-E-N-N-U-T-O, AND ANGELA WALDEN WEAVER, PH.D., BOTH FROM THE  
6 BUTNER FACILITY.

7 I RECEIVED TODAY, I DON'T KNOW IF IT WAS FILED, BUT THIS  
8 MORNING A DOCUMENT FILED BY MR. RORTY ENTITLED NOTICE OF MOTION  
9 AND MOTION FOR ORDER DIRECTING MARSHALS PURSUANT TO 18 U.S.C.  
10 4282.

11 DO YOU HAVE THAT MR. O'REILLY?

12 MR. O'REILLY: YES, YOUR HONOR. MS. GARCIA WAS KIND  
13 ENOUGH TO GET ME A COPY.

14 THE COURT: THANK YOU. SO THOSE ARE THE DOCUMENTS  
15 I'VE READ AND REVIEWED PURSUANT TO TODAY'S HEARINGS.

16 IS THERE ANYTHING ELSE THAT I MISSED OR ANY OTHER  
17 DOCUMENTS THAT COUNSEL HAVE FILED AND WANT TO DRAW MY ATTENTION  
18 TO.

19 MR. O'REILLY: NOT FROM THE GOVERNMENT.

20 MR. RORTY: DID THE COURT INDICATE THAT IT RECEIVED  
21 THE UNITED STATES REPLY TO THE DEFENDANT'S OPPOSITION TO THE  
22 THREE SUBSTANTIVE PLEADINGS, THE GOVERNMENT'S INITIAL PLEADINGS  
23 AND --

24 THE COURT: I'VE RECEIVED AND READ 543 AND 547.

25 MR. RORTY: I BELIEVE THERE'S AN ADDITIONAL PLEADING

1 OF THE GOVERNMENT'S.

2 MR. O'REILLY: I THOUGHT, YOUR HONOR, THE UNITED  
3 STATES REPLY TO MR. RORTY'S --

4 THE COURT: YES.

5 MR. O'REILLY: YES.

6 MR. RORTY: THANK YOU.

7 THE COURT: ALL RIGHT. THAT'S DOCUMENT 547. ALL  
8 RIGHT. THANK YOU.

9 I'M HAPPY TO HEAR ARGUMENT FROM THE PARTIES. SO  
10 MR. O'REILLY, MS. WONG, SHOULD I HEAR FROM YOU ABOUT YOUR  
11 PLEADINGS?

12 MR. O'REILLY: YOUR HONOR, I DON'T WANT TO BELABOR  
13 WHAT WE'VE ALREADY PUT BEFORE THE COURT, BUT I DO WANT TO  
14 BASICALLY LAY THIS OUT AND EXPLAIN WHY THE GOVERNMENT'S  
15 POSITION IS AS WE ARE TAKING.

16 MR. LIGHTER STANDS CONVICTED OF SERIOUS FINANCIAL CRIMES  
17 NOT JUST AGAINST THE UNITED STATES BUT ALSO AGAINST INDIVIDUALS  
18 WITH THE FRAUD LOSS CALCULATED IN THE DRAFT PSR OF MILLIONS OF  
19 DOLLARS.

20 AND ONE THING THAT DOES GREATLY CONCERN THE UNITED STATES  
21 IS THE REFERENCE IN THE DRAFT PSR -- EXCUSE ME, NO -- IN THE  
22 MOST RECENT FMC BUTNER REPORT, AND I JUST WANT TO READ IT, THAT  
23 WHILE MR. LIGHTER'S RELEASE WOULD NOT CREATE A SUBSTANTIAL RISK  
24 OF BODILY INJURY TO ANOTHER PERSON OR SERIOUS DAMAGE TO  
25 PROPERTY OF ANOTHER AS A RESULT OF HIS MENTAL DISEASE OR

1 DEFECT, THE REPORT GOES ON TO STATE MR. LIGHTER MAY CONTINUE TO  
2 PRESENT THE RISK OF FINANCIAL ECONOMIC HARM TO OTHERS DUE TO  
3 HIS INTACT COGNITIVE FUNCTIONING.

4 HE WAS CONVICTED OF DEFRAUDING VERY INTELLIGENT  
5 INDIVIDUALS, DOCTORS OF PSYCHIATRY, A PROFESSOR OF  
6 ARCHITECTURE, OUT OF MILLIONS OF DOLLARS AND FMC BUTNER HAS  
7 STATED THAT THAT COGNITIVE FUNCTIONING IS STILL THERE EVEN IF  
8 HE'S PRESENTLY NOT COMPETENT TO ASSIST COUNSEL. AND HE IS A  
9 CONVICTED DEFENDANT.

10 OUR PERCEPTION OF WHAT HAS HAPPENED AND WHERE WE ARE NOW  
11 IS THE ANALYSIS FOR COMPETENCY HAS BEEN COMPLETE. AND 4244 IS  
12 NOT -- DOES NOT ADDRESS WHETHER OR NOT A DEFENDANT IS  
13 COMPETENT.

14 IT ADDRESSES WHAT TO DO WITH A CONVICTED INDIVIDUAL, OF  
15 WHICH MR. LIGHTER IS, WHO, BY REASON OF DISEASE OR MENTAL  
16 DISEASE OR DEFECT, SHOULD NOT BE PLACED IN A GENERAL  
17 POPULATION.

18 AND AS WE LAY OUT IN OUR PAPERS, THERE IS SOMETHING --  
19 THERE SHOULD BE THE PROVISIONAL SENTENCE AND THEN IF AND WHEN  
20 HIS COMPETENCY IS REGAINED EITHER THROUGH MEDICAL ADVANCES OR  
21 BY SOME OTHER WAY, HE THEN WOULD COME BACK AND BE SENTENCED AND  
22 THE SENTENCE THAT UNDER THE DRAFT PSR THAT HE WAS LOOKING AT  
23 WAS 15 TO 20 YEARS.

24 AND HAVING -- I HAVE TAKEN A QUICK GLANCE AT THE CHANGES  
25 OF THE MOST RECENT VERSION OF THE SENTENCING GUIDELINES THAT

1           WOULD REDUCE -- WE CALCULATE IT WOULD REDUCE THE OFFENSE LEVEL  
2           BY 1. SO INSTEAD OF 15 TO 20 IT WOULD BE ROUGHLY 12 AND A HALF  
3           TO 17 YEARS.

4           SO THIS IS A VERY SIGNIFICANT AND SERIOUS CRIME WITH  
5           INDIVIDUAL VICTIMS UNLIKE THE CASE PROVIDED BY MR. RORTY WHERE  
6           MR. CHAUDHRY HAD A SOMEWHAT SIMILAR SITUATION AND WAS CONVICTED  
7           AT TRIAL. POST-TRIAL HE WAS DETERMINED NOT TO BE COMPETENT TO  
8           ASSIST COUNSEL FOR SENTENCING, AND MR. CHAUDHRY WAS PLACED ON A  
9           PRESENTENCE SUPERVISION BY JUDGE BREYER UP IN THE NORTHERN  
10          DISTRICT.

11          BUT WHAT MR. CHAUDHRY'S CRIME WAS, WAS DEFRAUDING THE  
12          I.R.S. AND COMMITTING STRUCTURING VIOLATION TO EVADE REPORTING  
13          REQUIREMENTS. THERE WERE NO INDIVIDUAL VICTIMS. HE WAS A TAX  
14          CHEAT.

15          AND THE OTHER THING THAT I CAN TELL YOU, HAVING DISCUSSED  
16          THE MATTER WITH THE U.S. ATTORNEY'S OFFICE UP THERE, THAT IS  
17          NOT AN APPEALABLE ORDER. THERE IS -- BECAUSE IT'S NOT A FINAL  
18          ORDER, THE U.S. ATTORNEY'S OFFICE SOUGHT TO APPEAL THE JUDGE'S  
19          RULING AND THE NINTH CIRCUIT CAME BACK AND SAID WE DON'T HAVE  
20          JURISDICTION YET.

21          UNLIKE IF THIS COURT WERE TO IMPOSE A PROVISIONAL  
22          SENTENCE, AS WE ARE URGING THE COURT TO DO, THAT IS AN  
23          APPEALABLE ORDER AND IT COULD BE REVIEWED AND IT COULD -- A  
24          GOOD SOLID DIRECTION COULD BE OBTAINED FOR ANY FUTURE CASE.

25          THAT, IN ESSENCE, IS OUR POSITION THAT MR. LIGHTER

1 CONTINUES TO BE A DANGER NOT BY REASON OF HIS MENTAL DISEASE OR  
2 DEFECT BUT BECAUSE OF HIS INTACT COGNITIVE FUNCTION. HE STANDS  
3 CONVICTED OF SERIOUS FINANCIAL CRIMES AND THE DRAFT PSR  
4 INDICATES A VERY SIGNIFICANT SENTENCE IS WARRANTED UNDER THE  
5 GUIDELINES.

6 TODAY HE HAS BEEN IN CUSTODY FOR APPROXIMATELY JUST UNDER  
7 FOUR YEARS. IF WE WERE TO PROCEED TO SENTENCING, AND WE CAN'T  
8 BECAUSE HE'S BEEN FOUND TO BE INCOMPETENT, IT IS LIKELY THAT  
9 THE GUIDELINE SENTENCE TO BE IMPOSED WOULD BE SIGNIFICANTLY  
10 GREATER THAN THAT.

11 AND FOR THE REASONS THAT WE PUT IN OUR PLEADINGS AND FOR  
12 THE REASONS THAT I JUST DISCUSSED, WE DO BELIEVE SECTION 4244  
13 PROVIDES FOR AND A PROVISIONAL SENTENCE SHOULD BE IMPOSED.

14 THE COURT: THANK YOU VERY MUCH.

15 MR. O'REILLY: THANK YOU.

16 THE COURT: MR. RORTY.

17 MR. RORTY: THANK YOU, YOUR HONOR. LET ME FIRST  
18 JUST ADDRESS MR. O'REILLY'S RECENT COMMENTS HERE.

19 THE QUESTION OF THE SEVERITY OF THE OFFENSE, THE LOSS, THE  
20 NATURE OF THE OFFENSE, I HAVE NO FACTUAL DISAGREEMENT WITH THE  
21 GOVERNMENT'S REPRESENTATIONS.

22 BUT THAT -- THOSE FACTORS ARE SIMPLY IRRELEVANT TO THESE  
23 PROCEEDINGS. WE HAVE BEEN WALKING DOWN A STATUTORY PATH THAT  
24 HAS CLEAR GUIDELINES ABOUT HOW TO PROCEED, AND THE SEVERITY OF  
25 THE CHARGES AND THE POTENTIAL SENTENCE ARE SIMPLY NOT PART OF

1 THAT CALCULUS.

2 I UNDERSTAND THE GOVERNMENT'S FEELING ABOUT IT. I  
3 UNDERSTAND THE FEELINGS OF VICTIMS IN THE CASE AND SO FORTH.

4 BUT THOSE FACTORS SIMPLY ARE NOT PRESENT IN THE ANALYSIS  
5 WHICH IS NOW BEFORE THE COURT.

6 THE NARROW ANALYSIS IS FOUNDED IN THE TENSION THAT THE  
7 GOVERNMENT, I THINK, WOULD LIKE TO SEE AND WOULD LIKE TO ARGUE  
8 EXISTS BETWEEN SECTION 4244 AND SECTION 4246.

9 MY POSITION IS THAT THERE'S NOT A TENSION BETWEEN THOSE  
10 TWO STATUTES AND THERE IS NO AMBIGUITY.

11 4244 AND THE CONCEPT OF A PROVISIONAL SENTENCE IS NOT  
12 DESIGNED TO AND HAS, TO MY KNOWLEDGE, AND TO THE BEST OF MY  
13 RESEARCH, AND I BELIEVE THE GOVERNMENT'S RESEARCH, HAS NEVER  
14 BEEN HELD TO APPLY TO A DEFENDANT WHO HAS BEEN FOUND NOT TO BE  
15 COMPETENT.

16 THE CASES CITED BY THE GOVERNMENT JENSEN, ABOU-KASSEM, AND  
17 ROTHMAN ARE ALL NOT ONLY DISTINGUISHABLE BUT SIMPLY  
18 INAPPLICABLE TO THESE FACTS.

19 I GO THROUGH THEM AND I WON'T BELABOR THE POINT. I  
20 DISCUSS THEM IN MY PLEADINGS. BUT IN SHORT, JENSEN DEALS WITH  
21 THE EXISTENCE OF A MENTAL DISEASE OR DEFECT OTHER THAN  
22 COMPETENCE, NOT RELATED TO COMPETENCY. AND SO IT INVOKES THE  
23 DISCUSSION OF 4244 WHERE COMPETENCY HAS NOT BEEN AN ISSUE.

24 IN ABOU-KASSEM THE DEFENDANT WAS FOUND TO BE COMPETENT AND  
25 SUFFERING FROM A MENTAL DISEASE OR DEFECT AND THUS WAS

1 PROVISIONALLY SENTENCED. THAT CASE, IN FACT, HIGHLIGHTS THE  
2 DISTINCTION BETWEEN 4241 AND 4246 AND THEIR RELATIONSHIP AND  
3 4244. THAT HELPED SERVE TO DEFINE THE DISTINCTION BETWEEN  
4 MENTAL DISEASE OR DEFECT AS DESCRIBED IN SECTION 4244 AND  
5 COMPETENCY AT ISSUE IN THIS CASE AND INVOKED BY SECTIONS 4241  
6 AND 4246.

7 AND IN ROTHMAN, THE LAST CASE CITED BY THE GOVERNMENT, THE  
8 ONLY ISSUE BEFORE THE COURT WAS WHETHER THE DEFENDANT WAS  
9 COMPETENT. THE COURT FOUND HE WAS INCOMPETENT BUT EXPLICITLY  
10 DECLINED TO REACH THE QUESTION OF WHETHER 4241 OR 4244 APPLIES.

11 SO THERE SIMPLY IS NO AUTHORITY FOR A PROVISIONAL SENTENCE  
12 IN THIS CASE. I THINK THE PLACE WE ARE -- WE HAVE ARRIVED AT  
13 IS, AS THE COURT IS WELL AWARE THAT MR. LIGHTER IS NOT  
14 COMPETENT, THE BUREAU OF PRISONS HAS CONCLUDED THAT HE WILL NOT  
15 BE RESTORED TO COMPETENCY, NOT SUBSTANTIALLY LIKELY TO BE  
16 RESTORED TO COMPETENCY, AND THAT HE DOES NOT MEET THE  
17 DEFINITION OF DANGER AS DESCRIBED BY SECTION 4246.

18 IF ALL OF THOSE THINGS ARE TRUE, THE END OF THAT STATUTORY  
19 ROAD IS MR. LIGHTER'S RELEASE. THERE SIMPLY IS NO OTHER REMEDY  
20 OR PROVISION OF LAW THAT PROVIDES OTHERWISE.

21 AND DESPITE THE GOVERNMENT'S CONCERNs REGARDING THE  
22 SEVERITY OF THE CHARGES, A POTENTIAL SENTENCE AT ANYTHING ELSE,  
23 AGAIN, THOSE ARE NOT FACTORS. THEY MAY OR MAY NOT BE  
24 REALISTICALLY FOUNDED. THEY MAY OR MAY NOT BE PRACTICAL  
25 CONSIDERATIONS, BUT THEY'RE NOT PART OF THE STATUTORY SCHEME

1 THAT THE COURT IS ADDRESSING HERE.

2 SO I THINK THAT -- UNLESS THE COURT HAS QUESTIONS OR WOULD  
3 LIKE ME TO ADDRESS SPECIFIC CASES OR ANYTHING ELSE ABOUT THE  
4 STATUTORY SCHEME, I'M PREPARED TO SUBMIT.

5 THE COURT: ALL RIGHT.

6 MR. RORTY: BUT I THINK IT'S A FAIRLY CLEAR CUT  
7 ISSUE.

8 WOULD THE COURT LIKE ME TO ADDRESS ANY SPECIFIC COMPONENTS  
9 OF THE ARGUMENTS OR ANY OTHER ASPECT OF THE STATUTES?

10 THE COURT: NO.

11 MR. RORTY: OKAY. THANK YOU.

12 THE COURT: THANK YOU. ANYTHING FURTHER?

13 MR. O'REILLY: YOUR HONOR, I THINK THE CASES DO  
14 INDICATE THAT THEY'RE CONTRARY TO WHAT MR. RORTY IS SAYING. IT  
15 IS AMBIGUOUS. IT'S A PROBLEMATIC AREA BECAUSE WHAT MR. RORTY  
16 IS ARGUING IS WE HAVE A CONVICTED DEFENDANT, CONVICTED OF  
17 SERIOUS CRIMINAL CONDUCT WHO BY THE LOGIC OF MR. RORTY'S  
18 ARGUMENT IS SIMPLY LET FREE. AND WHETHER THIS WOULD HAVE BEEN  
19 THREE AND A HALF YEARS LATER OR A YEAR LATER OR SIX MONTHS  
20 LATER WOULD BE IMMATERIAL UNDER THAT SAME LOGIC.

21 THAT DEFIES COMMON SENSE AND THE STATUTORY ANALYSIS  
22 INCLUDES THE APPLICATION OF COMMON SENSE.

23 HERE WE BELIEVE THAT 4244 PROVIDES NO AMBIGUITY IN SOME  
24 SENTENCE AS IF YOU HAVE SOMEBODY WHO IS MENTALLY OR SUFFERING  
25 FROM MENTAL DISEASE OR DEFECT, A PROVISIONAL SENTENCE CAN BE

1 WARRANTED. IT'S UP TO THE COURT WHETHER IT IS OR IS NOT  
2 WARRANTED, AND WE ARGUE THAT THE COURT SHOULD FIND THAT IT IS.

3 ONE THING THAT WE ALSO DO, YOU KNOW, WANT TO RESTATE BY  
4 OUR ARGUMENT IF WE'RE WRONG, WE'RE BACK HERE AND THE NINTH  
5 CIRCUIT SAYS, HEY, YOU MADE A MISTAKE. FINE, WE STRAIGHTEN  
6 THAT OUT.

7 OTHER THAN MR. RORTY'S ARGUMENT, THAT DOESN'T GET REVIEWED  
8 AND THAT, WE THINK, IS ALSO SOMETHING THAT THE COURT SHOULD AT  
9 LEAST CONSIDER IN REACHING ITS DECISION.

10 THE COURT: THANK YOU VERY MUCH. THANK YOU. AND,  
11 OF COURSE, MR. O'REILLY, YOU AND MS. WONG WERE PRESENT IN THIS  
12 COURTROOM WHEN THE MATTER WAS TRIED IT WAS YEARS AGO.

13 MR. RORTY, YOU'RE ON YOUR FEET.

14 MR. RORTY: I AM. I WANTED TO MAKE ONE BRIEF  
15 RESPONSE TO MR. O'REILLY.

16 THE COURT: ALL RIGHT.

17 MR. RORTY: I THINK THAT THE CLARITY AND GUIDANCE  
18 THAT THE COURT MAY NEED IN THIS CASE IS FOUND IN TWO PLACES.

19 IN ABOU-KASSEM, AND I'M SORRY, THAT'S A-B-U - K-A-S-S-E-M,  
20 IS THE CASE TO WHICH I'VE BEEN REFERRING, MR. O'REILLY'S  
21 ARGUMENT, THE POSITION HERE REALLY AMOUNTS TO ARGUING THAT  
22 MENTAL DISEASE OR DEFECT AND COMPETENCE SHOULD BE TREATED  
23 SIMILARLY AND ARE THE SAME FOR PURPOSES OF THIS ANALYSIS.

24 THAT SPECIFIC QUESTION WAS ADDRESSED BY ABU-KASSEM, AND  
25 THIS IS A QUOTE FROM ABU-KASSEM, "PERSONS INCOMPETENT TO STAND

1 TRIAL AND PERSONS INCOMPETENT TO STAND TRIAL WHO SUFFER FROM A  
2 MENTAL DISEASE OR DEFECT AT THE TIME OF SENTENCING ARE NOT  
3 SIMILARLY SITUATED. THEY'RE NOT THE SAME CONCEPT. THEY'RE NOT  
4 SIMILARLY SITUATED AND THE SAME STATUTORY PROVISIONS DO NOT  
5 APPLY.

6 ALTHOUGH THERE IS A DEARTH OF CASE LAW ON THIS SPECIFIC  
7 POINT, THIS COURT DOES HAVE OTHER GUIDANCE AND LUCKILY IT'S  
8 GOOD GUIDANCE FROM WITHIN THIS DISTRICT. JUDGE BREYER HAD  
9 OCCASION TO WALK THIS EXACT PATH AND --

10 THE COURT: I READ THAT. THAT'S IN YOUR PLEADINGS.

11 SO MR. WONG AND MR. O'REILLY WERE THE TRIAL ATTORNEYS IN  
12 THIS CASE, AND THE TRIAL TOOK A NUMBER OF DAYS, WEEKS, PERHAPS,  
13 AND A NUMBER OF WITNESSES. AND I RECALL THIS COURTROOM FILLED  
14 WITH BOXES WITH THE RECORDS OF THE OFFENSES AND THE DISCOVERY  
15 IN THE CASE. AND THE CASE WAS LITIGATED TO A JURY, AND THE  
16 COMMUNITY RETURNED WITH THEIR VERDICTS AFTER HEARING THE  
17 EVIDENCE.

18 AND, OF COURSE, WE KNOW THE HISTORY SUBSEQUENT TO THE  
19 CONVICTION. WE KNOW THAT MR. LIGHTER HAD A CHANGE OF COUNSEL,  
20 PERHAPS THREE, PERHAPS MORE, BUT PERHAPS AT LEAST THREE COUNSEL  
21 SUBSEQUENT OR IN THESE PROCEEDINGS.

22 WE KNOW THAT THE ISSUE OF MR. LIGHTER'S MENTAL HEALTH AND  
23 MENTAL CAPACITY WERE RAISED LATER BY MR. RORTY, CURRENT  
24 COUNSEL, AND THE COURT MADE RULINGS ON THOSE AS TO TRIAL  
25 ISSUES, NEW TRIAL ISSUES.

1 AND THEN SUBSEQUENT TO THOSE MOTIONS THEN WE KNOW THAT THE  
2 PATH THAT THIS CASE TOOK REGARDING MR. LIGHTER'S MENTAL STATUS.

3 AND IT WAS A LONG PATH AND A SOMEWHAT, I'M QUITE  
4 CONFIDENT, A FRUSTRATING PATH FOR THE GOVERNMENT AND FOR  
5 MR. LIGHTER. HE WAS REFERRED FOR MEDICAL EVALUATION. I THINK  
6 WE HAVE AT LEAST THREE REPORTS THAT SPEAK TO HIS MEDICAL  
7 CONDITION. THERE'S UNANIMITY IN THOSE RECORDS, AND I RECOGNIZE  
8 IT. AND NO COUNSEL HERE HAVE TALKED ABOUT THAT. BUT UNANIMITY  
9 WAS IT WAS THE LACK OF CONFIDENCE, AND THE COURT SO FOUND BY  
10 THE APPROPRIATE BURDEN OF PROOF STANDARD.

11 THERE WERE PROBLEMS THROUGHOUT THE CASE ALSO,  
12 TRANSPORTATION PROBLEMS. MR. LIGHTER, WHILE ORDERED TO BUTNER,  
13 I THINK IT WAS THE FIRST TIME, PERHAPS THE SECOND TIME, WE  
14 DISCOVERED ONLY PERHAPS, PERHAPS A MONTH, PERHAPS MORE THAN A  
15 MONTH LATER THAT HE STILL WAS IN THE LOCAL COUNTY JAIL HAVING  
16 NOT RECEIVED THE BENEFIT OF THE EVALUATION. HE LINGERED,  
17 LANGUIISHED HERE, AND IF I COULD USE THAT WORD, IN THE LOCAL  
18 COUNTY JAIL UNTIL HIS PRESENCE WAS DISCOVERED HERE SUBSEQUENT  
19 TO A STATUS CONFERENCE THAT WAS SET BY THE COURT, AND WE ALL  
20 DISCOVERED AT THAT TIME THAT HE HAD NOT BEEN MOVED TO  
21 NORTH CAROLINA FOR THAT INTERVIEW.

22 WE TOOK ACTION. ALL OF THE PARTIES ARE CONCERNED ABOUT  
23 THAT. WE TOOK ACTION. HE WAS SENT TO BUTNER. AND, AGAIN,  
24 THERE WERE SOME DELAYS THAT -- I ONLY POINT THIS OUT TO, TO, I  
25 SUPPOSE, REVISIT THE TRAIL THAT THIS CASE HAS TAKEN.

1 AS TO THE RESULTS OF THOSE REPORTS, WE ALL KNOW WHAT THEY  
2 ARE, BUT WHEN WE'RE TALKING ABOUT THEM, THIS REALLY IS AN ISSUE  
3 AND AS I LOOK AT IT 4244, 4246, 4241, WHICH STARTED. THAT WAS  
4 THE GATEWAY TO THE PATH THAT WE TAKE OR FIND OURSELVES IN NOW.

5 IT WOULD -- IT SEEMS TO ME THAT THE UNDERLYING ISSUE IS  
6 CAN SOMEONE WHO IS NOT COMPETENT BE SENTENCED? AND I THINK THE  
7 CODE, I THINK THE CODES INSTRUCT US THAT IT IS A VIOLATION OF  
8 DUE PROCESS FOR AN INDIVIDUAL WHO DOES NOT HAVE MENTAL  
9 COMPETENCY IN THE CRIMINAL JUSTICE SYSTEM TO BE SENTENCED.  
10 THAT'S SOMETHING THAT CANNOT OCCUR.

11 AND THAT'S, I THINK, IS WHERE THE TENSION OR THE DISPARITY  
12 BETWEEN 4244 AND 4246 THROUGH 4241, I THINK, FROM MY VIEW,  
13 COMES IN.

14 AN INCOMPETENT INDIVIDUAL CANNOT BE SENTENCED. THE 4244  
15 SCHEME IS AN APPROPRIATE ONE AND MY SENSE IS THAT IT'S WELL  
16 FOUNDED BECAUSE THE RECOGNITION OF CONGRESS IS THAT IT'S  
17 INAPPROPRIATE TO SENTENCE AN INCOMPETENT PERSON. THEY CANNOT  
18 BE SENTENCED. THAT'S A VIOLATION OF DUE PROCESS.

19 WHAT SHOULD OCCUR IN THE ABSENCE OR OF COMPETENCY IS AS  
20 4244 DIRECTS.

21 AN INDIVIDUAL CAN RECEIVE WHAT IS CALLED A PROVISIONAL  
22 SENTENCE, AND THEY ARE SENT TO A FACILITY SUCH THAT A DIRECTOR  
23 COULD ASSIST THEM, PROVIDE THE NECESSARY TREATMENT, NECESSARY  
24 GUIDANCE, INCLUDING PERHAPS PSYCHOTROPIC MEDICATION AND OTHERS  
25 THAT COULD RESTORE THAT INDIVIDUAL TO A LEVEL OF A SITUATION

1 WHERE SHE OR HE THEN COULD BE SENTENCED.

2 OUR SITUATION IS DIFFERENT HERE FOR A NUMBER OF REASONS.

3 FIRST OF ALL, I THINK THE STATUTORY SCHEMES ARE DIFFERENT.

4 MR. LIGHTER HAS BEEN FOUND NOT TO BE COMPETENT.

5 WE KNOW THAT HIS PHYSICAL CONDITIONS WITH PARKINSON'S ALSO  
6 INDICATE AND THE BUTNER REPORT TELLS US THAT AS FAR AS  
7 RESTORATION OF ANY COMPETENCY, THAT'S FRUSTRATING BECAUSE OF  
8 HIS PARKINSON'S. HE WILL NOT, PURSUANT TO THE BUTNER REPORT,  
9 HE WILL NOT GAIN OR NOT BE RESTORED BECAUSE OF THE PROBLEMS  
10 WITH THE PSYCHOTROPIC MEDICATION THAT WILL SEVERELY IMPACT OR  
11 AFFECT HIS LIFESPAN SHOULD HE BE ASSIGNED A REGIMENT OF  
12 PSYCHOTROPIC MEDICATION. THAT WOULD INTERFERE AND PUT HIS LIFE  
13 AT RISK GIVEN HIS PARKINSON'S DISEASE.

14 THE RESULT OF THAT IS THAT IF HE WERE TO BE UNDER 4244 AND  
15 BE PROVISIONALLY SENTENCED, THAT WOULD BE, IN ESSENCE, A  
16 SENTENCE TO THE MAXIMUM TERM BECAUSE WE KNOW HIS COMPETENCY  
17 WOULD NOT BE RESTORED AND THEY WOULD KEEP HIM FOR THE MAXIMUM  
18 TERM PROVIDED WHICH I THINK MR. O'REILLY TELLS US IS 20-SOME  
19 YEARS OR SOMETHING LIKE THAT.

20 THAT WOULD -- THAT JUST SEEMS TO ME TO BE A MAXIMUM  
21 SENTENCE WITHOUT A HEARING, WITHOUT ANY CONSIDERATION OF THE  
22 3553 FACTORS OR ANY OTHER FACTORS THAT WOULD BE APPROPRIATE. I  
23 DON'T THINK ANYBODY IS GOING TO ADVOCATE FOR THAT.

24 WE TOOK THE PATH WE DID AND THE COURT DID SENDING  
25 MR. LIGHTER TO BUTNER TO DETERMINE UNDER 4241, AND THAT WAS THE

1 SCHEME, THAT WAS THE PATH THAT THE COURT TOOK, TO DETERMINE  
2 UNDER THE CODE WHAT RELIEF IS AVAILABLE TO THE COURT VIS-A-VIS  
3 SENTENCING POST-CONVICTION, POST-CONVICTION BUT PRESENTENCING.

4 MR. LIGHTER PRESENTS, AS WE ALL KNOW, HE'S NOT COMPETENT  
5 TO BE SENTENCED. BUTNER TELLS US THAT THE OTHER DOCTORS HAVE  
6 TOLD US THAT THERE'S UNANIMITY IN THAT.

7 MR. LIGHTER'S COMPETENCY FOR PURPOSES OF THE CRIMINAL  
8 JUSTICE SYSTEM CANNOT BE RESTORED GIVEN THIS SITUATION WITH HIS  
9 PHYSICAL CONDITION, PARKINSON'S DISEASE.

10 THE COURT DOES FIND, AND I DO FIND THAT IT IS APPROPRIATE  
11 THEN TO FOLLOW THROUGH AND GO FORWARD WITH AND THE REASON THAT  
12 THE COURT SENT OR RETURNED MR. LIGHTER TO BUTNER FOR THE  
13 ANALYSIS OF WHETHER OR NOT -- A RISK ANALYSIS, AND THAT WAS THE  
14 COURT'S PURPOSE TO DETERMINE WHETHER OR NOT RELEASE OF  
15 MR. LIGHTER AT THIS TIME WOULD POSE A RISK AND THREAT TO THE  
16 COMMUNITY AND WE HAD SOME DISCUSSIONS.

17 MS. WONG APPEARED, I THINK, LAST AND URGED THE COURT ALSO  
18 TO ALSO ASK BUTNER ABOUT ECONOMIC CRIMES, WHETHER OR NOT THAT  
19 WAS A RISK, AND I RESPECTFULLY DECLINED HER INVITATION TO DO  
20 SO.

21 THE REPORT REFLECTS, AS MR. O'REILLY POINTS OUT, THE LAST  
22 SENTENCE OF THE REPORT, THE ANALYSIS, THE CONCLUSION SPEAKS TO  
23 BUTNER'S OPINION, THE DOCTOR'S, PARDON ME, OPINION ABOUT THE  
24 RISK OF FINANCIAL ECONOMIC HARM TO OTHERS DUE TO HIS INTACT  
25 COGNITIVE FUNCTION I THINK IS THE PHRASE THAT THEY USE.

1 AND THAT MAY PRESENT ITSELF, BUT WHEN I LOOK AT THE  
2 ANALYSIS AND THE PURPOSE OF 4246 AND THAT RISK ANALYSIS, I'M  
3 LEFT WITH THE OPINION AND THE BUTNER REPORT TELLS US THAT HIS  
4 CONDITION DOES NOT MEET THE CRITERIA FOR COMMITMENT PURSUANT TO  
5 TITLE 18 UNITED STATES CODE SECTION 4246.

6 THE BUTNER REPORT INFORMS US THAT THEIR OPINION IS THAT  
7 HIS RELEASE WOULD NOT CREATE A SUBSTANTIAL RISK OF BODILY  
8 INJURY TO ANOTHER PERSON OR SERIOUS DAMAGE TO PROPERTY OF  
9 ANOTHER AS A RESULT OF MENTAL DISEASE OR DEFECT. THAT'S WHAT  
10 THE STATUTE REQUIRES US TO LOOK FOR WHEN WE DO A RISK ANALYSIS.

11 IN REVIEWING THIS CASE AND THE TOTALITY OF THE  
12 CIRCUMSTANCES AND PARTICULARLY THESE REPORTS, THE COURT FINDS,  
13 AND I WILL ADOPT THE RECOMMENDATION AND THE FINDINGS OF THE  
14 BUTNER REPORT, AND I DO FIND THAT RELEASE OF MR. LIGHTER WOULD  
15 NOT CREATE A SUBSTANTIAL RISK OF BODILY INJURY TO ANOTHER  
16 PERSON OR SERIOUS DAMAGE TO PROPERTY OF ANOTHER AS A RESULT OF  
17 MENTAL DISEASE OR DEFECT.

18 THE COURT, THEREFORE, WOULD ORDER MR. LIGHTER RELEASED  
19 FROM CUSTODY FORTHWITH.

20 THIS PRESENTS SOME OTHER ISSUES TO MR. LIGHTER. I DO NOT  
21 KNOW WHAT HIS CIRCUMSTANCES ARE NOW IN REGARDS TO -- AND,  
22 MR. RORTY, THIS IS PERHAPS SOMETHING THAT MIGHT CONTINUE UNDER  
23 YOUR CJA REPRESENTATION.

24 I DON'T KNOW IF MR. LIGHTER HAS ANY FUNDS IN HIS BOOKS, AS  
25 THEY SAY. HE WILL BE RELEASED FROM THE LOCAL FACILITY, THE

1 LOCAL COUNTY JAIL, I PRESUME.

2 I DO -- I'LL TURN MY ATTENTION TO THE SUBMITTED 4282 ORDER  
3 AND 18 U.S.C. 4282 DOES PROVIDE WHEN AN INDIVIDUAL CAN BE  
4 RETURNED BY THE UNITED STATES MARSHAL TO THE LOCATION OF HIS  
5 ARREST, AND WE KNOW MR. LIGHTER WAS NOT ARRESTED. HE APPEARED  
6 IN COURT HERE IN SAN JOSE PURSUANT TO A SUMMONS.

7 I BELIEVE THAT SECTION ALSO ALLOWS, THE CODE ALSO ALLOWS  
8 AND PERMITS FOR THE MARSHAL TO PROVIDE TRANSPORTATION. I DON'T  
9 KNOW ABOUT SUSTENANCE. I'M NOT SURE WHAT THAT MEANS IN THE  
10 CODE.

11 BUT MY SENSE IS THAT THE MARSHAL WILL PROVIDE AND ENGAGE A  
12 TRANSPORTATION VIA AIRPLANE, I ASSUME, TO HIS RESIDENCE WHICH I  
13 BELIEVE IS HAWAII. I DON'T RECALL THE CITY BUT -- OR THE  
14 ISLAND, I SHOULD SAY, BUT I WOULD OTHERWISE SIGN THIS ORDER  
15 ORDERING THE MARSHAL TO RETURN HIM TO HIS LOCAL, HIS RESIDENCE,  
16 AND THE MARSHAL WILL HAVE TO ENGAGE A TRANSPORTATION FOR THAT.

17 THAT TAKES SOME TIME, I'M TOLD.

18 MR. RORTY, THIS IS WHERE I GO BACK TO YOU, YOUR  
19 OBLIGATIONS REPRESENTING YOUR CLIENT, IF HE'S RELEASED, I DON'T  
20 KNOW WHAT HIS STATUS IS, HE SUFFERS FROM PARKINSON'S DISEASE,  
21 IF HE HAS ANY FUNDS AT ALL TO FIND SHELTER AT THIS TIME. I  
22 SUPPOSE I LEAVE THAT TO YOUR GOOD GRACES TO FIGURE THAT OUT.

23 MR. RORTY: MAY I RESPOND, YOUR HONOR? I FILED A  
24 DECLARATION TOGETHER WITH MY REQUEST THAT LAYS OUT  
25 MR. LIGHTER'S CIRCUMSTANCES.

1           THE COURT IS QUITE CORRECT, HE'S NOT ONLY INDIGENT, HE  
2           POSSESSES NO CLOTHES, NO IDENTIFICATION, AND NO LOCAL  
3           RELATIONSHIPS.

4           THE COURT: WHAT WAS HE -- PARDON ME FOR  
5           INTERRUPTING. WAS HE BOOKED INTO CUSTODY -- WHEN HE WAS  
6           REMANDED TO CUSTODY BY THE COURT, THE MARSHALS MOST LIKELY  
7           WOULD HAVE PLACED HIS CLOTHING AND ALL PERSONAL ITEMS WITH THE  
8           CUSTODIAL FACILITY. MY SENSE IS THAT THE SHERIFF'S OFFICE HAS  
9           THOSE OR THE MARSHALS.

10           MR. RORTY: I BELIEVE THAT THOSE ITEMS HAVE BEEN  
11           RETURNED TO FAMILY IN HAWAII SOME TIME AGO.

12           THE COURT: I SEE.

13           MR. RORTY: IF I MAY, I WANT TO THANK AND  
14           ACKNOWLEDGE THE ASSISTANCE BOTH OF THE MARSHAL SERVICE AND THE  
15           PRETRIAL SERVICES.

16           I'VE SPOKEN WITH MS. ANDERSON, MR. LEW, MR. HARWELL AND  
17           OTHERS CONCERNING THIS SITUATION BECAUSE ALL PARTIES ARE  
18           CONCERNED THAT THIS PROCEED IN A THOUGHTFUL AND EFFECTIVE WAY  
19           THAT DOESN'T HARM EITHER THE GOVERNMENT OR MR. LIGHTER'S  
20           INTERESTS.

21           I THINK MY UNDERSTANDING, AND I WOULD PLEASE INVITE ANY  
22           CORRECTION FROM THE COURT IF I GET IT WRONG, BUT IF THE COURT  
23           DOES SIGN THE ORDER, THEY WILL PLACE MR. LIGHTER ON A  
24           COMMERCIAL FLIGHT TO HAWAII. THAT CAN'T BE DONE TODAY. IT  
25           WOULD BE DONE, AND I WOULD INVITE THE MARSHAL'S SUGGESTION TO

1 AN APPROPRIATE DATE IN THE NEAR FUTURE.

2 MY PROPOSAL IS THAT THE COURT SIMPLY STAY THE ISSUANCE OF  
3 ITS RELEASE ORDER UNTIL WE HAVE A CLEAR PLAN THAT WON'T  
4 JEOPARDIZE MR. LIGHTER'S HEALTH OR INTERESTS.

5 IF THE MARSHAL SERVICE MIGHT BE INVITED TO SUGGEST A DATE  
6 AND TIME, OR WE COULD POTENTIALLY RETURN FOR STATUS TO BE  
7 INFORMED BY THE MARSHAL AS TO A PARTICULAR DATE, I THINK  
8 IT'S -- DESPITE MR. LIGHTER'S ENTITLEMENT TO RELEASE, I THINK  
9 HE MIGHT AGREE AND IT'S IN HIS INTEREST IF HE HAS TO STAY A  
10 COUPLE OF MORE DAYS IN CUSTODY IN ORDER TO ASSURE THAT HE IS  
11 NOT COMPROMISED.

12 SO IF THE COURT DOESN'T MIND ASKING A REPRESENTATIVE OF  
13 THE MARSHAL SERVICE TO ADDRESS THE COURT, THAT WOULD BE HELPFUL  
14 TO GUIDE US AS TO HOW WE'RE GOING TO PROCEED.

15 THE COURT: MY UNDERSTANDING IS THAT THE AIRPLANE  
16 TICKET HAS TO BE PURCHASED THROUGH SOME DIVISION IN THE EAST  
17 COAST, AND THAT THE GOVERNMENT PROCUREMENT OFFICE IS NOT  
18 LOCATED LOCALLY. IT HAS TO BE DONE, OF COURSE, BECAUSE IT'S  
19 THE GOVERNMENT, AND IT HAS TO BE DONE VERY CAREFULLY AND WITH  
20 HIGH QUALITY CONTROL.

21 SO IT'S -- MY SENSE IS, MY UNDERSTANDING IS THAT THAT  
22 HAPPENS SOMEWHERE ON THE EAST COAST, THE TICKET IS PURCHASED,  
23 AND I DON'T KNOW WHAT THOSE ARRANGEMENTS ARE.

24 THE OTHER QUESTION I HAVE IS IF MR. LIGHTER DOES NOT HAVE  
25 IDENTIFICATION, I DON'T KNOW HOW HE'S GOING TO BE PERMITTED TO

1 BOARD AN AIRPLANE.

2 MR. RORTY: I SPOKE WITH MR. LEW ABOUT THAT.

3 PRETRIAL SERVICES IS ABLE TO PROVIDE HIM WITH A VERY LIMITED  
4 IDENTIFICATION. IT'S NOT A FEDERALLY SANCTIONED OR STATE  
5 SANCTIONED IDENTIFICATION, BUT IT BEARS HIS NAME, BIRTH DATE,  
6 AND PICTURE. AND I CAN REPRESENT TO THE COURT THAT THE LAST  
7 TIME THAT I DEALT WITH THIS ISSUE, A DEFENDANT WAS RELEASED  
8 WITHOUT IDENTIFICATION WAS ABLE TO USE A CARD SUPPLIED BY  
9 PRETRIAL SERVICES TO GO THROUGH TSA AND TO TRAVEL SUBSEQUENTLY.

10 THE COURT: MR. LEW, YOU'RE ON YOUR FEET, SIR.

11 OFFICER LEW: YES, YOUR HONOR. AS I EXPLAINED TO  
12 MR. RORTY THIS MORNING WHEN HE BROUGHT THIS UP, WE DO ISSUE  
13 DEFENDANT I.D.'S. THEY'RE ISSUED STRICTLY FOR THE PURPOSES OF  
14 ALLOWING DEFENDANTS TO WALK INTO THE FEDERAL BUILDINGS IN OUR  
15 DISTRICT. YOU KNOW, THEY STILL HAVE TO GO THROUGH SECURITY BUT  
16 MANY OF THEM WHO DON'T HAVE I.D., THIS PROVIDES THEM WITH AN  
17 I.D.

18 WE DO ADVISE ALL DEFENDANTS THAT THE I.D. IS NOT INTENDED  
19 TO BE USED FOR TRAVEL PURPOSES, BUT MR. RORTY ADVISED ME THAT  
20 ONE OF HIS FORMER CLIENTS WAS ABLE TO USE IT TO GET THROUGH  
21 TSA. WE DO NOT ISSUE IT FOR THAT PURPOSE.

22 CERTAINLY IF IT WORKS, YOU KNOW, WE'RE FINE AND THAT HELPS  
23 FACILITATE THEIR TRAVEL. BUT WE JUST CANNOT MAKE ANY PROMISES  
24 THAT TSA WILL ACCEPT IT JUST BECAUSE THE RULES ARE CONSTANTLY  
25 CHANGING.

1                   THE COURT: THANK YOU, MR. LEW.

2                   OFFICER LEW: YOU'RE WELCOME.

3                   THE COURT: IT MAY BE THAT A PHONE CALL TO LOCAL  
4                   TSA, I ASSUME THE AIRPORT HE WOULD USE WOULD BE SAN JOSE AND I  
5                   WONDER IF SOME ARRANGEMENTS COULD BE MADE CALLING THEM IN  
6                   ADVANCE AND ALERTING THEM OF THE ISSUE SO THERE'S NOT AN ISSUE  
7                   AT THE GATE SUCH THAT MR. LIGHTER MISSES HIS PLANE AND HAS TO  
8                   WAIT AT THE AIRPORT.

9                   WAS THERE SOMEONE FROM THE MARSHAL'S OFFICE?

10                  MS. ANDERSON: GOOD MORNING, YOUR HONOR.

11                  MARY ANDERSON. WE DID DO SOME PRE-INQUIRY THIS MORNING AND THE  
12                  FEDERAL TRAVEL, WHAT THEY ISSUE IS AN ELECTRONIC TICKET. SO  
13                  THAT ALSO MEANS THAT MR. LIGHTER WILL HAVE TO GO, YOU KNOW, TO  
14                  THE COUNTER WITH THAT I.D. SO I DON'T KNOW IF TSA VERBALLY,  
15                  YOU KNOW, WOULD PROVIDE A RESPONSE, WHETHER OR NOT THAT  
16                  IDENTIFICATION WOULD BE SUFFICIENT ESPECIALLY NOT KNOWING WHAT  
17                  IT LOOKS LIKE.

18                  BUT WE ALREADY HAVE STARTED THE WHEELS KIND OF MOVING  
19                  ALONG. THEY ONLY HAVE TWO FLIGHTS SO IT WILL PROBABLY BE AN  
20                  EARLY MORNING, BUT WE WOULD BE ABLE TO RESPOND TO THE COURT  
21                  PROBABLY WITHIN, YOU KNOW, A FEW HOURS BECAUSE WE DID ADVISE  
22                  THE COURT WOULD PROBABLY LIKE TO KNOW WHEN THE FLIGHTS WERE AND  
23                  DO THAT RELEASE AS CLOSE TO THE FLIGHTS AS POSSIBLE.

24                  THE OTHER ISSUE IS THAT THE JAIL IS NOT GOING TO PROVIDE  
25                  MEDS AND ANY TYPE OF PRESCRIPTION. SO THE LESS AMOUNT OF TIME

1           BETWEEN THE RELEASE AND THE ACTUAL FLIGHT WOULD PROBABLY BE IN  
2           THE BEST INTEREST.

3           THE COURT: THANK YOU FOR RAISING THAT POINT.

4           MS. ANDERSON: SURE.

5           THE COURT: AGAIN, MR. LIGHTER, I THINK YOUR CJA  
6           DUTIES ARE GOING TO EXTEND THROUGH. IF YOU CAN CONTACT THE  
7           JAIL TO SEE WHAT MR. LIGHTER'S MEDICATION REGIMENT IS AND IF  
8           THERE'S SOME COORDINATION ABOUT RECEIVING HIS MEDS AS CLOSE IN  
9           TIME TO HIS RELEASE, THAT WOULD BE TO HIS BENEFIT, OF COURSE.

10          MR. RORTY: I'VE MET WITH MEDICAL SOCIAL WORKERS AT  
11          THE JAIL AND WHO ARE AWARE OF THE SITUATION AND HIS POTENTIAL  
12          RELEASE, AND I MET WITH THEM YESTERDAY AND THEY'RE WAITING TO  
13          HEAR FROM ME AS TO THE OUTCOME OF THIS HEARING AND THEY'RE  
14          WILLING TO ASSIST HIM WITH SOME MEDICATION.

15          IT SOUNDS LIKE -- MAYBE MS. ANDERSON COULD HELP US. MY  
16          INCLINATION MIGHT BE ABLE TO SAY -- DOES THE COURT HAVE AN  
17          AFTERNOON MONDAY CALENDAR?

18          THE COURT: WE DO.

19          MR. RORTY: WOULD IT BE APPROPRIATE TO PUT OR STAY  
20          THE RELEASE ORDER UNTIL MONDAY AFTERNOON AND PLACE HIM ON  
21          CALENDAR AND WORK TOWARDS A TUESDAY DEPARTURE? THAT SEEMS TO  
22          GIVE EVERYONE THE MAXIMUM AMOUNT OF TIME. BUT IF THE MARSHAL'S  
23          OFFICE WOULD PREFER TO DO IT SOONER, WE CAN. IT WOULD JUST  
24          SEEM TO ME THAT WOULD GIVE US ALL TIME.

25          MS. ANDERSON: I DON'T THINK IT'S GOING TO REQUIRE

1 THAT MUCH TIME, AND I THINK THE LONGER WE PROLONG IT, IF ANY OF  
2 THE COMPONENTS ARE NOT AVAILABLE, WHICH WOULD BE MYSELF,  
3 EVERYTHING WOULD BASICALLY STAND DOWN.

4 SO AS LONG AS -- IF WE GET THE ORDER BY THEN AND IF YOU  
5 HAVE AN ORDER THAT STAYS IT, BUT AN ORDER BASICALLY THAT WOULD  
6 ALLOW ME TO OBTAIN THE TRAVEL.

7 SO IT WOULD BE AN ORDER FOR AN INDIGENT DEFENDANT TO  
8 TRAVEL HAVING NOTHING TO DO WITH WHATEVER YOUR DISPOSITION IS  
9 TODAY, THEN THAT WOULD ALLOW THE MARSHAL SERVICE TO AT LEAST DO  
10 THE TRAVEL PORTION OF IT BECAUSE THE TRAVEL AGENCY DOES NOT --  
11 HAS NO CONCERN AS TO THE DISPOSITION.

12 THE COURT: THEY NEED AN ORDER OF RELEASE, I THINK,  
13 IS WHAT I'M INFORMED. THEY, THE TRAVEL DIVISION, NEED THE  
14 COURT ORDER INDICATING OR INDICATING THAT THE COURT ORDERS THIS  
15 TICKET.

16 MS. ANDERSON: IT WOULD JUST BE A TRAVEL ORDER FOR  
17 AN INDIGENT DEFENDANT.

18 THE COURT: I SEE.

19 MS. ANDERSON: SEPARATE FROM THE ACTUAL DISPOSITION  
20 OF THE ACTUAL CASE. YOU KNOW, USUALLY WE CAN DO IT WITHIN  
21 24 HOURS AS LONG AS IT'S NOT A HOLIDAY.

22 MR. RORTY: AND I HAVE PROVIDED THE COURT WITH TWO  
23 SEPARATE ORDERS.

24 MS. ANDERSON: YES, YES.

25 MR. RORTY: SO WHAT I'M UNDERSTANDING IS THAT THE

1           COURT WOULD THEN SIGN THE 4248 ORDER FIRST WHICH WOULD THEN  
2           GIVE THE MARSHAL SERVICE THE AUTHORITY TO OBTAIN THE TICKET,  
3           AND IF THE MARSHAL SERVICE COULD THEN NOTIFY THE COURT OF A  
4           TIME AND WHEN A FLIGHT IS AVAILABLE, THE COURT COULD THEN SIGN  
5           THE ORDER OF RELEASE FOR THAT TIME OR CLOSE IN TIME TO THAT  
6           PERIOD.

7           THE COURT: IS THAT THE PROTOCOL?

8           MS. ANDERSON: THAT WOULDN'T BE A PROBLEM FOR US.

9           BUT, YOU KNOW, COMBINING THE TWO WOULD MAKE IT VERY  
10          DIFFICULT FOR THE MARSHAL SERVICE TO OBTAIN TRAVEL.

11          THE COURT: OKAY. WELL, THANK YOU VERY MUCH.

12          MS. ANDERSON: YOU'RE WELCOME.

13          THE COURT: THEN THAT'S WHAT THE COURT WILL DO.

14          AND, MR. RORTY, THIS ALSO MAY CALL UPON YOUR DUTIES AS  
15          CJA COUNSEL AND WHAT THEY ARE AND SUBSEQUENT TO MR. LIGHTER'S  
16          RELEASE, HE NEEDS TO GET TO THE AIRPORT AND HE MIGHT NEED SOME  
17          ASSISTANCE NEGOTIATING THE GATE AND PICKING UP HIS TICKET AND  
18          HAVING SOMEBODY THERE TO ASSIST HIM.

19          MR. RORTY: I'LL BE GLAD TO ASSIST.

20          THE COURT: I'M JUST MAKING THAT OPENING COMMENT AND  
21          IF THAT IS A CJA FUNCTION THAT REQUIRES ADDITIONAL BILLING  
22          PURPOSES, I'LL SPEAK WITH THE PERSON IN CHARGE ABOUT THAT AND  
23          THEY CAN CONTACT ME.

24          MR. O'REILLY, TO YOUR POINT AND TO MS. WRONG'S POINT, YOU,  
25          OF COURSE, REPRESENTED THE UNITED STATES MAGNIFICENTLY AT THE

1 TRIAL AND PUT THE GOVERNMENT'S BEST INTEREST AND THE PEOPLE'S  
2 BEST INTEREST FORWARD. AND IT WAS NOT SURPRISING THAT YOU  
3 GAINED THE CONVICTION THAT YOU DID BASED ON YOUR PRESENTATION  
4 OF THE EVIDENCE.

5 AND I AGREE WITH YOUR ASSESSMENT OF THE OFFENSES. IT'S  
6 VERY SERIOUS OFFENSES. THEY'RE OFFENSES AGAINST THE VICTIM WHO  
7 TESTIFIED DURING THE TRIAL ABOUT THEIR LOSSES. SO I DO  
8 RECOGNIZE THAT.

9 AND I THINK THAT WHEN WE LOOK AT THE CODES, WE LOOK AT  
10 WHAT WE HAVE IN FRONT OF US AND NOTHING IS PERFECT AND NONE OF  
11 US HERE, I THINK, AND I DON'T MEAN TO DISPARAGE CONGRESS, BUT I  
12 THINK THERE WOULD BE A COMMON OPINION THAT CONGRESS ISN'T  
13 PERFECT AND WHEN THEY PROMULGATE THE RULES THAT WE FOLLOW AND  
14 THE CODE SECTIONS THAT WE FOLLOW, WE DO THE BEST THAT WE CAN.  
15 AND WHEN THESE CIRCUMSTANCES COME UP THAT ARE UNIQUE AND  
16 SOMETIMES IT'S A CASE OF FIRST IMPRESSION. THIS ONE CERTAINLY  
17 IS TO ME GIVEN THE CASE AND THE HISTORY AND THE MENTAL HISTORY  
18 OF MR. LIGHTER.

19 SO I DO WANT TO THANK YOU ALL. IT'S BEEN A PLEASURE  
20 WORKING WITH ALL OF YOU.

21 MR. LIGHTER, GOOD LUCK TO YOU, SIR.

22 I HOPE THIS HAS BEEN, WELL, IT WOULD BE A -- I DON'T MEAN  
23 TO SUGGEST THAT IT'S BEEN INSTRUCTIVE FOR YOU. CERTAINLY IT'S  
24 BEEN AN ORDEAL FOR YOU THROUGH YOUR LAWYER'S COMMENTS, BUT IT  
25 IS ONE THAT THE GOVERNMENT FELT NECESSARY TO PROCEED IN, AND

1           YOU DID HAVE THE BENEFIT OF THE TRIAL, AND THE COMMUNITY SPOKE  
2           AS TO THE EVIDENCE IN THE CASE.

3           MR. O'REILLY: YOUR HONOR, AS I UNDERSTAND WHAT THE  
4           COURT'S ORDER IS, ARE THERE ANY CONDITIONS OF RELEASE OR IS THE  
5           CASE SIMPLY BEING ORDERED DISMISSED?

6           THE COURT: I'M NOT ORDERING THE CASE DISMISSED. I  
7           AM ORDERING HIM RELEASED. SO I'M NOT SETTING ASIDE A  
8           CONVICTION.

9           MR. O'REILLY: OKAY. THANK YOU, YOUR HONOR.  
10          ARE THERE ANY CONDITIONS ON WHICH HE IS BEING RELEASED?

11          THE COURT: I DON'T THINK I HAVE JURISDICTION TO  
12          IMPOSE THOSE UNDER THIS PARTICULAR SENTENCING SCHEME -- EXCUSE  
13          ME, IT IS NOT A SENTENCE BUT UNDER THE RELEASE THAT I HAVE,  
14          UNLIKE THE CHAUDHRY CASE WHICH I THINK WAS BROUGHT TO ALL OF  
15          OUR ATTENTION, THERE WERE CERTAIN CONDITIONS THAT WERE PLACED  
16          THERE. THIS IS A DIFFERENT MATTER. I DON'T FIND THAT I HAD  
17          ANY REASON TO IMPOSE THOSE CONDITIONS.

18          MR. O'REILLY: YOUR HONOR, I JUST WANTED  
19          CLARIFICATION ON THAT. THANK YOU VERY MUCH.

20          THE COURT: THANK YOU. ANYTHING FURTHER?

21          MR. RORTY: THE ONLY QUESTION, THERE'S NOTHING FOR  
22          THE COURT TO DO TODAY, BUT GIVEN THE POSTURE OF THE CASE AND MY  
23          UNDERSTANDING, AND I'VE HAD SOME DISCUSSIONS WITH MS. WONG AND  
24          MR. O'REILLY ABOUT THIS, IS THAT MY UNDERSTANDING IS THAT THE  
25          COURT RETAINS JURISDICTION OVER THIS MATTER.

1 IT IS STILL AN EXISTING DISTRICT COURT MATTER, AND,  
2 THEREFORE, SHOULD I, IN CONSULTATION WITH MR. LIGHTER AND IN MY  
3 OWN RESEARCH, THINK THAT A MOTION LIES TO ADDRESS THE  
4 CONVICTION, I MAY BRING THAT BEFORE THIS COURT. THAT'S MY  
5 CURRENT UNDERSTANDING, AND I JUST WANTED TO INFORM THE COURT AS  
6 I MOVE FORWARD IN.

7 THE COURT: AS I SAID, I'M NOT DISTURBING THE JURY'S  
8 FINDINGS AND CONVICTIONS IN THIS CASE. THIS IS A UNIQUE  
9 SITUATION WHERE THERE HAS BEEN A CONVICTION, BUT THERE CANNOT  
10 BE A SENTENCING BASED ON MR. LIGHTER'S, THE COURT'S FINDING AND  
11 MEDICAL FINDINGS AND THE COURT'S ADOPTION OF THAT, THAT HE'S  
12 NOT COMPETENT TO BE SENTENCED. SO THAT PUTS US IN A VERY  
13 UNIQUE SITUATION.

14 ALL RIGHT.

15 MR. RORTY: THANK YOU VERY MUCH.

16 THE COURT: THANK YOU VERY MUCH.

17 (COURT CONCLUDED AT 11:10 A.M.)

18

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1  
2  
3 CERTIFICATE OF REPORTER  
4  
5  
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED  
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,  
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14   
15

16 

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IRENE RODRIGUEZ, CSR, RMR, CRR  
17 CERTIFICATE NUMBER 8074  
18

19 DATED: JANUARY 19, 2016  
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